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The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHAN HOLBURN,

Plaintiff,

vs.

KITSAP PUBLIC HEALTH DISTRICT,

Defendant.

NO. 3:18-cv-05018-BHS

PLAINTIFF'S MOTION TO COMPEL
DISCOVERY

NOTE ON MOTION CALENDAR: August 2,
2019

Plaintiff Nathan Holburn (Holburn) requests an order compelling Defendant Kitsap Public Health District (KPHD) to answer interrogatories and respond to requests for production propounded in Plaintiff's First Set of Discovery Requests, and Plaintiff's Second Set of Discovery Requests, pursuant to Federal Rule of Civil Procedure 37(a). Plaintiff also requests an award of attorney's fees incurred in connection with this motion pursuant to Federal Rule of Civil Procedure 37(e).

I. STATEMENT OF FACTS

This is an employment discrimination case brought by Holburn, who was terminated after a 26-year career with KPHD. Holburn's Complaint For Damages asserts claims for failure to provide reasonable accommodation, disability and age discrimination, hostile work environment, retaliation and failure to provide and maintain protected leave for his depression and PTSD. *Complaint For Damages*, ¶¶ 5.1-5.3.

Holburn has served two sets of discovery requests on KPHD, which included interrogatories and requests for production of documents. *Jackson Decl.*, ¶¶2-3 and *Exhibits 1 and 2*. KPHD served responses to Holburn's First Set of Discovery Requests which either failed to fully respond to some of the discovery requests or provided responses which were not responsive. *Id.*, *Exhibit 1*. KPHD has not responded at all to Holburn's Second Set of Discovery Requests as of the time of preparing this motion. *Id.*, ¶3.

Holburn's counsel sent correspondence to KPHD counsel regarding its failure to adequately respond to Holburn's First Discovery Requests and requested a CR 37 conference with KPHD counsel. *Id.*, ¶4 and *Exhibit 3*. A discovery conference was scheduled for 1:00 p.m. on July 15, 2019, which is the deadline for filing discovery motions in accordance with the Court's case schedule. *Id.*, ¶4. Counsel for Holburn called counsel for KPHD at 1:00 p.m. and had to leave a voicemail message. Counsel for Holburn then emailed counsel for KPHD asking that she call for the discovery conference. As of the time of the preparation of this Motion to Compel, counsel for KPHD has not called counsel for Holburn. *Id.*, ¶4.

II. ARGUMENT

A. Plaintiff's First Discovery Requests to Defendant

1 The following discover requests have not been properly answered or responded to by
2
3 KHPD:
4

5 Interrogatory No. 3/Request for Production No. 2: This interrogatory and request for
6
7 production seeks information regarding any insurance policies which KPHD maintains which may
8
9 cover any of the claims asserted by Holburn. KPHD has not provided all of the information
10
11 requested regarding insurance coverage, including the Declarations page of the policy showing the
12
13 policy limits.
14

15 Request for Production No. 8: This request for production requests all documents or
16
17 communications that refer, pertain or relate to Holburn's employment with KHPD. Defendant's
18
19 response indicates it is keeping 13 "steno pads" containing Holburn's handwritten notes created
20
21 during his employment with KPHD, as well as 3 USB drives containing emails from KPHD
22
23 employees and one USB drive containing documents responsive to this request for production at
24
25 KPHD's counsel's office in Spokane, where they are available for review by Holburn. KPHD has
26
27 not provided any valid reason to withhold a substantial number of responsive documents rather than
28
29 providing them to Plaintiff. Since most of these documents are stored on thumb drives, copying
30
31 these electronic files and sending them to Holburn's counsel, as KPHD has done with other
32
33 documents, is not burdensome at all. Requiring Holburn's counsel to make a trip to Spokane and
34
35 spend untold hours in KPHD counsel's office reviewing these documents is unduly burdensome.
36

37 Request for Production No. 17: The request seeks documents reflecting all communications
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39 made to any of Defendant's employees and/or in response to inquiries pertaining to Plaintiff's
40
41 employment relationship, work performance, or other employment-relate circumstances. KPHD
42
43 responded by objecting to the request as overbroad, burdensome and duplicative of other discovery
44
45 requests and refers to its response to Request for Production No. 16, which does not identify any

1 documents. This discovery request seeks documents specifically related to any communications
2
3 with any of KPHD's employees regarding Holburn's employment relationship, job performance and
4
5 employment-related circumstances. It is not requesting all employment communications and
6
7 therefore is not overbroad. Defendant's objection is not valid and its response is non-responsive.
8

9 Request for Production No. 20: This request seeks documents relating to the enforcement
10
11 letters Holburn was required to prepare for the period 2013-2017, including records maintained by
12
13 vendors or other companies contracting with KPHD. Defendant responded by stating it "does not
14
15 have possession of records held by third-party vendors, if any records exist." This response is both
16
17 invalid and not in good faith. KPHD has authority to obtain records in possession of its
18
19 vendors. Holburn is aware that the enforcement letters he prepared are maintained by a company
20
21 which is operated by KPHD's IT Manager, Ed North, and his former manager, Eric Evans. *Jackson*
22
23 *Decl.*, ¶5. They certainly have the authority and ability to make those records available to KPHD.
24
25 This is a bad faith attempt to withhold important evidence from Holburn regarding the volume of
26
27 work he was required to perform relative to the other Environmental Health Specialists who did not
28
29 have this job responsibility.
30

31 Request for Production No. 21: This request seeks documents regarding the quantity of on-
32
33 site inspections and other work performed by Holburn and each of the other Environmental Health
34
35 Specialists during Holburn's employment with KPHD. Defendant's response only identifies
36
37 documents showing lists of property sites Holburn performed some type of work and information
38
39 on KPHD's website. No documents have been identified or produced regarding the quantity of on-
40
41 site inspections and other work performed by Holburn's co-workers, even though Holburn has some
42
43 documents prepared by KPHD showing the number of onsite inspections performed by KPHD
44
45 Environmental Health Specialists or a certain time period which he provided in his Response to the

1 Pre-Termination Notice and Complaint of Discrimination. *Id.*, ¶6 and Exhibit 4. KPHD must be
 2 required to produce all such documents and other statistics regarding the workload of Holburn and
 3 his co-workers. This is critical evidence for Holburn to establish his discrimination claims.
 4

5 Interrogatory No. 11: This interrogatory asks about specific information concerning
 6 KPHD's other Environmental Health Specialists, including (1) positions held, (2) dates they
 7 worked, (3) their age, (4) their nationality, (5) whether they have a disability, (6) any
 8 accommodation provided for their disability, and (7) any secretarial or other administrative
 9 assistance available to the employee. Defendant's answer refers to its response to Request for
 10 Production No. 25, which in turn refers to its response to Request for Production No. 24 regarding
 11 clerical staff, not Environment Health Specialists. Defendant's response is thus not responsive and
 12 avoids providing critical comparator information Holburn is requesting to establish his
 13 discrimination claims.
 14

15 **B. Plaintiff's Second Set of Discovery Requests**

16 Holburn served his Second Set of Discovery Requests to Defendant on June 12, 2019.
 17 *Id.*, ¶3. KPHD's responses were due no later than July 12, 2019. As of the time of preparation of
 18 this motion, KPHD has not provided any responses at all to these discovery requests. Even if
 19 KPHD serves responses to these discovery requests, they will not be timely and Holburn must file
 20 this motion to compel responses now due to the deadline for discovery motions.
 21

22 **III. CONCLUSION**

23 Holburn requests an order compelling Defendant to answer the interrogatories and produce
 24 the documents in response to Plaintiff's First Set of Discovery Requests discussed above, and also
 25 compelling Defendant to answer the interrogatories and produce all documents in response to
 26 Plaintiff's Second Set of Discovery Requests.
 27

1 Holburn also requests an award of attorney's fees incurred in connection with this motion to
2
3 compel in the amount of \$2275, as detailed in the Declaration of Ronald L. Jackson file in support
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5 of this motion.

6
7 Respectfully submitted this 15th day of July, 2019.
8

9 JACKSON LAW FIRM

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11
12
13 By: 

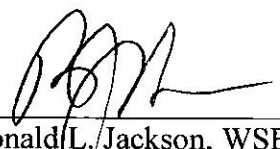
14 Ronald L. Jackson, WSBA #14903
15 Attorney for Plaintiff Nathan Holburn
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I electronically filed a true and correct copy of the document to which this Declaration is affixed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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Dated this 15th day of July, 2019 at Bellevue, Washington.

By: 
Ronald L. Jackson, WSBA #14903
Attorney for Plaintiff Nathan Holburn